FINANCING MEMORANDUM

The European Commission, hereinafter referred to as „THE COMMISSION”, acting for and on behalf of the European Community, hereinafter referred to as "THE COMMUNITY" on the one part, and

The Ministry of Transport and Maritime Economy of the Republic of Poland, represented by the Minister of Transport and Maritime Economy, hereinafter referred to as "THE RECIPIENT" on the other part,

HAVE AGREED AS FOLLOWS

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement between THE COMMISSION and the Government of Poland signed on May 31 1990, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE:

Programme Number: PL 9809

Title: 1998 Large Scale Infrastructure Facility

Duration: Until 31 December 2000

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 20 MECU hereinafter referred to as "THE EC GRANT".

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until 31 December 2000, subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of THE EC GRANT which have not been contracted by this date shall be cancelled. The deadline for disbursement of THE EC GRANT is 31 December 2003. All disbursements must be completed by the deadline for disbursement. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry of the disbursement period of THE EC GRANT. All funds which have not been disbursed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

Correspondence relating to the execution of THE MEASURE, stating THE MEASURE'S number and title, shall be addressed to the following:
for the COMMUNITY:
Delegation of the European Commission
Al. Ujazdowskie 14
00-478 Warsaw
Poland
Tel.: (+4822) 625 0770
Fax: (+4822) 625 0380

for the RECIPIENT:
Ministry of Transport and Maritime Economy
Department of European Integration and International Cooperation
ul. Chałubińskiego 4/6
00-928 Warsaw
Poland
Tel.: (+4822) 628 81 30
Fax: (+4822) 628 53 65

ARTICLE 5 - NUMBER OF ORIGINALS

This Memorandum is drawn up in duplicate in the English language.

ARTICLE 6 - ENTRY INTO FORCE

This Memorandum shall enter into force on the date on which it has been signed by both parties. No expenditure incurred before this date is eligible for the EC GRANT.

The Annexes shall be deemed an integral part of this Memorandum.

Done at Warsaw
Date 24. 12. 1995

for THE RECIPIENT

Mr. Tadeusz Syryjczyk
Minister of Transport and
Maritime Economy

for THE COMMUNITY

Mr. Rolf Timans
Head of EC Delegation
in Poland

Annex 1 Framework Agreement
Annex 2 General Conditions (Annex A+B)
Annex 3 Special Provisions (Annex C)
ANNEX C SPECIAL PROVISIONS

1. OBJECTIVES AND DESCRIPTION

1.1 Overall and Specific Objectives

As part of the overall Phare programme, the overall objective for the LSIF is to facilitate the applicant countries efforts to join the European Union as soon as possible.

The LSIF has three specific objectives:
   a) to facilitate priority investments in transport and environment with a significant accession and transboundary impact.
   b) to facilitate loans from the participating IFI’s and cofinancing from the beneficiary countries.
   c) to familiarise the applicant countries with the competitive application and selection process - and decentralised implementation procedures - which shall be used by the Instrument for Structural Pre-Accession which will come into force in 2000 and which will prepare applicant countries for the management and implementation of future cohesion funds.

1.2 Project Eligibility

The LSIF has a number of eligibility criteria which had to be met for a project to be considered for support:
   a) be cofinanced with an IFI existing or planned loan in accordance with the Copenhagen criteria, and have the necessary commitment of cofinancing from the beneficiary.
   b) complement existing financiers and not “crowd out” any existing cofinancing (termed additionality)
   c) be ready for procurement after signature of the Financing Memorandum.
   d) have a minimum Phare project size of at least 2 MECU.

1.3 Project Selection, Transparency and Consultation

As cofinancing with the International Financial Institutions (IFI’s) is a precondition of support under the LSIF, the selection process commenced with a request to the IFI’s for a long list of potential projects for cofinancing under the LSIF in both 1998 and 1999.

This indicative long-list was screened in inter-service consultation with the relevant Commission services (i.e. Directorate Generals of transport, environment and regional development). A resulting list of projects was drawn up which had a high impact on a priority area as highlighted in the Accession Partnership and NPAA’s and, in many cases, which addressed a key transboundary issue, notably regional interconnectivity in
transport and the regional environmental problems of the Danube River Basin and Baltic Sea, both classified as “sensitive waters”.

This list was sent to the Phare National Aid Co-ordinators (NAC’s) who indicated their support for LSIF funding for the projects in either 1998 or 1999 and also proposed additional proposals for consideration under the LSIF.

The shortlist eligible for 1998 and initial 1999 LSIF support has been compiled on the basis of these responses from NACs and the relevant DGs.

The identification of priority projects for LSIF support in joint collaboration with the IFIs also represents a new approach which recognises the limited financial resources of Phare.

Special emphasis was thus given to those projects which could lever maximum additional resources from IFIs, partner countries and the private sector and which facilitate the earlier financing of additional phases in the target projects which otherwise would not take place. An analysis of the projects contained within the first two financing proposals for LSIF indicates that the Phare contribution of 144 Mecu to the first phase of the LSIF will be associated with a total investment package of 1.3 billion ECU. This represents a leverage of 8 Mecu of further investment from 1 Mecu of Phare contribution.

Such an approach has ensured that significant additional loan resources, far beyond that which Phare could commit for such projects on its own, have been facilitated through the co-operation with the IFIs on key accession topics.

The Phare component of the projects as set out in section 4.5 was identified together with the relevant National authorities and the IFIs and has been selected from the overall project package because it either ensures compliance with a specific Community aquis or because it is the least financially viable component and thus helps turn an economically viable project into a financially viable project.

1.4 Final Selection 1998

The final list of projects presented in this Financing Proposal was drawn from the approved shortlist on the basis of each project’s readiness for implementation, another key criteria for support under the LSIF.

Five transport projects were identified for financing under LSIF 1998 with a total value respectively of 85 MECU. Section 4.5 gives a summary description of each project and the project fiches in annex provide detailed descriptions.

In terms of country allocations, the breakdown of the LSIF 1998 budget is as follows: Bulgaria (20 mecu), Latvia (5 mecu), Poland (20 mecu), Romania (25 mecu) and Slovakia (15 mecu).
1.5 Description of Project Proposals

This section provides a summary of the projects to be financed under LSIF 1998. Further details are provided in the accompanying project fiches in Annex 1.

1.5.1 Bulgaria

Title: Railway Track Renewal
IFI: IBRD / EBRD
Phare: 20 mecu
Outline: Sections are located on Pan European Corridors IV & VIII, hence accession impact. Additionality very strong due to limited national funds.

1.5.2 Latvia

Title: Rehabilitation of railways E-W corridor
IFI: EIB/EBRD
Phare: 5 mecu
Outline: Rail line links corridors and forms part of TINA backbone network. Phare contribution will accelerate implementation.

1.5.3 Poland

Title: A1 Motorway
IFI: EIB
Phare: 20 mecu
Outline: Project located on Corridor VI. Upgrading to EU standard. Phare contribution will accelerate implementation and will be taken out of toll concession.

1.5.4 Romania

Title: Roads III
IFI: EIB/IBRD (EBRD)
Phare: 25 mecu
Outline: Clear accession impact with projects on Pan-European corridor IX, and compliance with weights and dimensions directive. Additionality very strong due to limited national funds and high number of economically viable sections.

1.5.5 Slovakia

Title: E-Roads III
IFI: EIB
Phare: 15 mecu
Outline: Project forms part of corridor VI. Complies with EU procurement rules. Motorway will comply fully with EU standards. Phare funds will accelerate implementation of project.

The environmental impact assessment procedures of the IFI and beneficiary country have been followed for each of the investment projects under the LSIF, details of which are provided in the individual project fiches.

Equal opportunity for men and women to participate in all projects will be ensured.

1.6 The LSIF 1999 Programme

In line with the approach to be taken on ISPA - for which the LSIF is a precursor - and in view of the large financial requirements for both areas, it is intended that a split as close to 50:50 as possible between the two target sectors of transport and environment shall be maintained over 1998 and 1999. Due to problems of project readiness on the shortlisted environment projects, the budget in the financing proposal to be financed with 1998 Phare budget is devoted exclusively to transport. The balance of the second financing proposal presented in 1998, but to be financed in 1999, clearly favours environment projects and, in addition to this, further priority environment projects from the screened and approved LSIF project shortlist have been identified for cofinancing under the third LSIF financing proposal 1999 (i.e. they clearly met all criteria but were not ready for implementation in 1998).

2. BUDGET

<table>
<thead>
<tr>
<th>Sector</th>
<th>Allocation</th>
<th>Investment</th>
<th>Institution Building</th>
<th>TA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport Projects</td>
<td>85</td>
<td>85</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Environment Projects</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Project Preparation</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Support</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL of the FM 1998</td>
<td>85</td>
<td>85</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>0%</td>
<td>0</td>
</tr>
</tbody>
</table>

3. IMPLEMENTATION ARRANGEMENTS
While the LSIF 1998 is presented to the Management Committee as a horizontal facility, the projects shall be implemented through the Phare national programme structures or directly by the cofinancing IFI on the basis of a Parallel Cofinancing and Delegated Implementation Agreement (PCA) through which the IFI shall be responsible for implementation.

This single Financing Proposal is presented to the Management Committee covering all the projects within the LSIF. Should a positive opinion be given, then the LSIF will be split on a project by project basis by signing 5 separate Financing Memoranda, as set out in the following table, thereby allowing an optimal follow up in each individual country and a maximum efficiency in project implementation. There will be no reallocation between these financing memoranda.

### Country Breakdown

<table>
<thead>
<tr>
<th>Country</th>
<th>Financing Memo or Parallel Cofinancing Agreement</th>
<th>MECU</th>
<th>Project Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>BG 9811</td>
<td>20</td>
<td>Railway Track Renewal</td>
</tr>
<tr>
<td>Latvia</td>
<td>LE 9810</td>
<td>5</td>
<td>Rehabilitation of railways E-W corridor</td>
</tr>
<tr>
<td>Poland</td>
<td>PL 9809</td>
<td>20</td>
<td>A1 Motorway</td>
</tr>
<tr>
<td>Romania</td>
<td>RO 9808</td>
<td>25</td>
<td>Roads III</td>
</tr>
<tr>
<td>Slovakia</td>
<td>SR 9812</td>
<td>15</td>
<td>E-Roads III</td>
</tr>
</tbody>
</table>

#### 3.1 Implementation through National Programmes

As indicated in the table overleaf, the bulk of the LSIF 1998 projects in question shall be implemented through the Phare National Programme system and, as such, the National Programme procedures will be applied subject to the implementation and funds flow arrangements specified in this Financing Proposal and in the Project Fiche which reflect the fact that the projects are being cofinanced by lead IFIs.

As for normal Phare National Programme projects, the funds flow shall be through the National Fund onto the CFCU or Implementing Agency, according to the normal national programme structures. Procurement and payments will be by the CFCU or Implementing Agency to the contractor. The beneficiary will be involved in the day to day supervision, reporting back on progress to the CFCU or Implementing Agency.

These projects will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures. These provide in the case of cofinancing with IFIs where Phare is the minority cofinancing partner (as in the case of all LSIF projects) that the implementation structures and systems of the cofinancing IFI will be followed as closely as possible (especially as regards procurement, supervision and monitoring through existing IFI project implementation units) while maintaining Phare’s rules of origin, transparency, advertising and eligibility in all procurement, however. This approach has been used to good effect on past projects, resulting in significantly enhanced implementation efficiencies.
A National Fund (NF), headed by the National Authorising Officer (NAO), will supervise the financial management of the Programme, and will be responsible for financial reporting to the European Commission. Appropriate financial control shall be carried out by the competent National Financial Control Authority with respect to the implementation of the programme.

The Commission will transfer the funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and the Ministry of Finance. Funds will be transferred following requests from the NAO. A payment of up to 20% of each project that is managed locally by each National Fund will be transferred to the NF following signature of the Financing Memorandum. Four Replenishments will be made of up to the equivalent to 20% of the project. The first replenishment will be triggered when 10% of the budget has been disbursed by the IAs and the CFCU. The second replenishment may be requested when 30% of the total budget in force has been disbursed. The trigger point for the third replenishment is 50%, and for the final fourth instalment when 70% is disbursed. Save for express prior authorisation from the Commission HQ, no replenishment request may be made if the aggregate of the funds deposited in the NF and the IAs exceeds 10% of the total budget in force of the commitment. Exceptionally the NAO may request an advance payment of more than 20% in accordance with the procedures laid down in the aforesaid Memorandum of Understanding.

**Implementation Arrangements**

<table>
<thead>
<tr>
<th>Project Title</th>
<th>Funds Flow</th>
<th>Implementing Agency</th>
<th>Procurement and day to day supervision</th>
<th>Overall Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria Railway Track Renewal</td>
<td>National Fund to IA</td>
<td>Ministry of Transport</td>
<td>Bulgarian Railway Company (BDZ)</td>
<td>Bulgarian Railway Company (BDZ)</td>
</tr>
<tr>
<td>Latvia Rehabilitation of railways E-W corridor</td>
<td>National Fund to IA</td>
<td>Ministry of Transport</td>
<td>Latvian Railways Technirail</td>
<td>Ministry of Transport</td>
</tr>
<tr>
<td>Poland A1 Motorway</td>
<td>National Fund to IA</td>
<td>Ministry of Transport and GDPR (General Directorate of Public Roads)</td>
<td>Road Directorate Gdansk</td>
<td>Ministry of Transport GDPR (General Directorate of Public Roads)</td>
</tr>
<tr>
<td>Romania Roads III</td>
<td>National Fund to IA</td>
<td>National Administration of Roads (AND)</td>
<td>National Administration of Roads (AND)</td>
<td>National Administration of Roads (AND)</td>
</tr>
<tr>
<td>Slovakia E-Roads III</td>
<td>National Fund to CFCU</td>
<td>CFCU</td>
<td>Slovak Road Administration</td>
<td>Slovak Road Administration</td>
</tr>
</tbody>
</table>
The National Fund will transfer funds to Implementing Agencies (IAs), including the Central Financing and Contracting Unit (CFCU), in accordance with Financing Agreements (FAs) signed between the NFs and the IAs/CFCU where applicable. In cases where the NF is itself the paying agent for the CFCU there will be no transfer of funds from the NF to the CFCU. The CFCU and the IAs will each be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all the operations carried out by the relevant CFCU/IA.

A separate interest bearing bank account, denominated in ECU, will be opened and managed by the NF in a separate accounting system in a Bank agreed in advance with the Commission. Interests will be reported to the European Commission; if the Commission so decides, on the basis of a proposal from the NAO, interests may be reinvested in the Programme.

The NAO and the PAOs will ensure that all contracts are prepared in accordance with the procedures set out in the DIS Manual’s procedures on IFI/Phare cofinanced projects.

3.2 General Conditions

All contracts must be concluded by 31 December 2000. All disbursements on all projects must be made by 31 December 2003.

The Commission shall take a direct role and provide expertise in supporting and overseeing the procurement and implementation process on LSIF projects because of the importance of the programme, because of the urgency of the contracting deadlines and because the CFCUs and National Funds are only now being put in place and getting up to full speed. This is a critical aspect if the contracting and disbursement deadlines are to be met. If the relevant national structures are not established in time to meet the commitment schedules set down in annex to this proposal and the project fiches, contracting may be undertaken centrally by the Commission.

Any funds not used by the expiry date of the programme will be recovered by the Commission.

For those contracts with funds retained for a warranty period extending beyond the end of the disbursement period of the programme, the overall total of funds related to those contracts, as calculated by the PAO and established by the Commission, will be paid to the Implementing Agency before the official closure of the programme. The Implementing Agency assumes full responsibility of depositing the funds until final payment is due and for ensuring that said funds will only be used to make payments related to the retention clauses. The Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Interests accrued on the funds deposited will be paid to the Commission after final payment to the contractors. Funds not paid out to the contractors
after final payments have been settled shall be reimbursed to the Commission. An overview of the use of funds deposited on warranty accounts - and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

4. **MONITORING AND ASSESSMENT**

On a country by country basis, a Joint Monitoring Committee (JMC) will be established. It will include the NAO, the NAC and the Commission. The JMC will meet at least once a year to review all Phare funded programmes - including the LSIF projects in their countries - in order to assess their progress towards meeting the objectives set out in Financing Memoranda and the Accession Partnership. The JMC may recommend a change of priorities and/or the re-allocation of Phare funds.

The JMC will be assisted by Monitoring Sub-Committees (MSC) and will include the NAC, the PAO of each IA (and of the CFCU where applicable) and the Commission Services. The MSC will review in detail the progress of each programme, including its components and contracts, on the basis of regular Monitoring and Assessment reports produced with the assistance of external consultant (in accordance with the provisions of the DIS Manual), and will put forward recommendations on aspects of management and design, ensuring these are effected. The MSC will report to the JMC, to which it will submit overall detailed reports on all Phare financed programmes.

Given the special nature of LSIF projects, implementation will also be closely monitored by the Commission centrally.

5. **AUDIT AND EVALUATION**

On projects implemented through Phare National Programme structures, the accounts and operations of the National Fund, and, where applicable, the CFCU and all relevant Implementing Agencies may be checked at the Commission’s discretion by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Union's Court of Auditors as referred to in the General Conditions relating to the Financing Memorandum attached to the Framework Agreement.

On projects where implementation is delegated to the cofinancing IFI, the Commission maintains the same rights of access to IFI financial records concerning the Phare funds for auditing purposes, as indicated above under the National Programmes.

The Commission services shall ensure that an ex-post evaluation is carried out after completion of the Programme.
6. **VISIBILITY / PUBLICITY**

The appropriate Programme Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the Commission Delegation. Further details are at the Annex.

7. **SPECIAL CONDITIONS**

In the event that agreed commitments are not met for reasons which are within the control of the implementing authority concerned or the IFI with whom the project is co-financed, the Commission may review the programme with a view, at the Commission’s discretion, to cancelling all or part of it and/or to reallocate unused funds for other purposes consistent with the objectives of the Phare programme.
Annexes

1. Project fiches
2. Cumulative quarterly contracting and disbursement schedule
3. Visibility / Publicity
4. Budget
5. Article 118 summary for the Official Journal
Annex 1.
Project fiche
Annex 4.
Article 118 summary for the Official Journal

Phare Large Scale Infrastructure Facility 1998

The Commission has agreed the Phare Large Scale Infrastructure Facility for 1998. The European Community will contribute up to a maximum of 85 MECU from budget line B7-5000 to this programme, which must be implemented by 31 December 2003.

Within the context of the New Orientations of Phare, the creation of a Large Scale Infrastructure Facility (LSIF) was proposed in order to offer additional support from 1998 onwards to projects that are not sufficiently covered under the national Phare programmes and which have a clear transboundary impact.

This need for additional support for infrastructure in the accession countries has also been recognised in the proposal for the creation of an Instrument for Structural Policies for pre-Accession (ISPA) with an annual budget of ca 1 BECU from the year 2000.

The LSIF will thus serve as a precursor to ISPA and it is for this reason that LSIF focuses on environmental projects and transport infrastructure projects (cf article 3 of proposed ISPA facility).

In order to gain a maximum of leverage from the limited Phare funds available, all projects will be co-financed with a relevant International Financing Institution.

The selection of projects for support under the LSIF was made upon the basis of a screening exercise by the European Commission which identified those projects being proposed by the IFIs and countries which best fit the specific selection criteria of this fund and in particular the criterion of relevance to the adoption of the acquis in conformity with the new Phare orientations.

The current Financing Proposal forms one of three financing proposals which will be presented to the Phare Management Committee on the LSIF. The current financing proposal proposes support for projects amounting to a total EC contribution of 85 Mecu.

The implementation of the projects awarded support by the LSIF will be through the national implementation structures under the decentralised implementation system or through the IFI concerned on the basis of joint and parallel cofinancing.

Further information about this programme can be obtained from:

(a) the Phare Internet service at: http://europa.eu.int/comm/dg1a/phare;
(b) the European Commission, DG IA Information Unit - Phare
   Fax: +32 2 299 17 77 or
   Email: phare.info@dg1a.cec.be.

Further tender opportunity details will be available as follows:
(a) for service tenders from the Phare Internet service at the above address.
(b) for all supply tenders over 300,000 ECU and for all works tenders above 1 MECU from the Official Journal of the European Communities. Tenders opportunities below these amounts will also be published, but this may be done only locally.

Expressions of interest for tenders may be made when the relevant details have been published.